

STAT

## Memorandum

Subject

Proposed Testimony on S. 1721

Date

DEC - 9 1987

To David P. Doherty  
General Counsel  
Central Intelligence Agency

From John O. McGinnis *ROM*  
Deputy Assistant Attorney  
General  
Office of Legal Counsel

Attached is a copy of the proposed testimony of Charles J. Cooper on S. 1721. Mr. Cooper will be testifying before the Senate Select Committee on Intelligence at 9:30 a.m. on December 11, 1987.

*I am informed that we must send ~~the~~ a copy of  
our testimony to the Senate Intelligence Committee by  
tomorrow at 9:30 a.m.*

Mr. Chairman, Members of the Committee:

I am pleased to appear before you today to discuss the constitutional issues implicated by S. 1721, a bill relating to the system of congressional oversight of intelligence activities. The Department of Justice believes that this legislation, in its present form, would unconstitutionally intrude upon the President's authority to conduct the foreign relations of the United States. In my statement, I will discuss briefly the Administration's constitutional concerns with S. 1721. It will be left to others in the Administration to address concerns of a nonconstitutional nature.

S. 1721, of course, would repeal the Hughes-Ryan Amendment, which requires Presidential approval of covert actions by the CIA. In its place, the bill would institute a new presidential approval requirement, which would become Section 503 of the National Security Act of 1947. Proposed Section 503 would require that the President authorize all "special activities," or covert actions, conducted by any department, agency, or entity of the United States government. The Presidential approval would take the form of a "finding," which must be reduced to writing within forty-eight hours of the time that a decision regarding covert actions is made.

Proposed Section 503 would be broader than the Hughes-Ryan Amendment in that it would apply not just to covert actions conducted by the CIA, but also to covert actions conducted by other agencies or entities of the United States. This change does not in and of itself raise a serious constitutional problem.